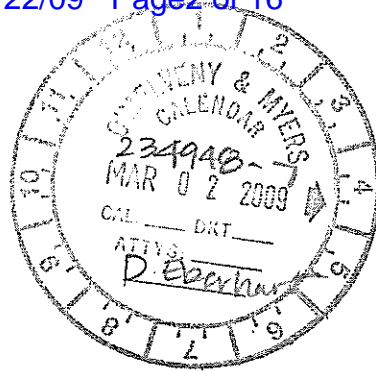


## **EXHIBIT 9**



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Attorneys for Defendants  
 THUNDERWOOD HOLDINGS, INC.,  
 BRIAN DUNNING, and BRIANDUNNING.COM

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

EBAY INC.,

Plaintiff,

vs.

DIGITAL POINT SOLUTIONS, INC.;  
 SHAWN HOGAN; KESSLER's FLYING  
 CIRCUS; THUNDERWOOD HOLDINGS,  
 INC.; TODD DUNNING; DUNNING  
 ENTERPRISES, INC.; BRIAN DUNNING;  
 BRIANDUNNING.COM; and DOES 1-20,

Defendants.

CASE NO. C 08-4052 JF

**RESPONSES OF DEFENDANT  
 THUNDERWOOD HOLDINGS, INC.  
 TO FIRST SET OF REQUESTS FOR  
 ADMISSION PROPOUNDED BY  
 PLAINTIFF EBAY INC.**

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT THUNDERWOOD HOLDINGS, INC.

SET NO.: ONE (1)

Defendant Thunderwood Holdings, Inc. ("Defendant" and/or "Responding Party") hereby responds to the First Set of Requests for Admission (Nos. 1-25) propounded by Plaintiff eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

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GENERAL STATEMENT

Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been dismissed with leave to amend. No amended complaint has been filed and/or served in this action. As such, there is no pending claim against Defendant and Defendant is not required to respond to Plaintiff's discovery request. In this regard, Defendant requested that Plaintiff acknowledge that no response is required or, in the alternative, grant Defendant an extension of time to respond to the discovery requests until some time after Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused Defendant's request without explanation. Defendant serves these responses out of an abundance of caution in the event it is determined that such responses are required despite the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves the right to withdraw these responses in total and otherwise object to the use, reference to, or disclosure of these responses in any manner for any purpose.

Brian Dunning ("Mr. Dunning") has invoked his privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is the sole shareholder and sole authorized representative of Responding Party, and the only person who can verify discovery responses on behalf of Responding Party, Responding Party cannot provide any verified responses without compromising Mr. Dunning's right against self-incrimination.

Should Mr. Dunning determine that there is no longer the threat of potential criminal prosecution and elect to withdraw his privilege against self-incrimination in the future, Responding Party expressly reserves the right to supplement its responses.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this

1 investigation has refused all requests to provide Defendants with a copy of the material seized  
2 by the FBI. Those items and records may contain information responsive to the requests  
3 below, but those items and records are not in the possession, custody or control of Defendants.

4 **RESPONSES**

5 **REQUEST FOR ADMISSION NO. 1:**

6 Admit that Thunderwood conducted business with eBay during at least some  
7 portion of 2007.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

9 Responding Party objects to this request on the grounds that it violates  
10 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
11 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
12 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
13 section 940. Responding Party further objects on the ground that this request is vague and  
14 ambiguous.

15 **REQUEST FOR ADMISSION NO. 2:**

16 Admit that Thunderwood conducted business with eBay during at least some  
17 portion of 2006.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

19 Responding Party objects to this request on the grounds that it violates  
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
23 section 940.

24 **REQUEST FOR ADMISSION NO. 3:**

25 Admit that Thunderwood conducted business with eBay during at least some  
26 portion of 2005.

27 / / /

28 / / /

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 4:**

Admit that Thunderwood conducted business with eBay during at least some portion of 2004.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 5:**

Admit that Thunderwood conducted business with eBay during at least some portion of 2003.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

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**REQUEST FOR ADMISSION NO. 6:**

Admit that Thunderwood participated in an eBay Affiliate Marketing Program or programs.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 7:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software programs and/or code that caused some Users' computers to access an eBay website without the User's knowledge.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 8:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software programs and/or code that caused some Users' computers to access an eBay web server without the User's knowledge.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the

U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 9:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software programs and/or code that redirected a User to an eBay website without the User knowingly clicking on an Advertisement Link.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 10:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software programs and/or code that redirected a User to an eBay web server without the User knowingly clicking on an Advertisement Link.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

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1 **REQUEST FOR ADMISSION NO. 11:**

2 Admit that, while participating in an eBay Affiliate Marketing Program or  
3 programs, Thunderwood utilized software programs and/or code that performed Cookie  
4 Stuffing.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

6 Responding Party objects to this request on the grounds that it violates  
7 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
8 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
9 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
10 section 940. Responding Party further objects on the ground that this request is vague and  
11 ambiguous.

12 **REQUEST FOR ADMISSION NO. 12:**

13 Admit that Thunderwood used methods, techniques and/or technological  
14 measures to avoid detection by eBay of certain aspects of how Thunderwood interacted with  
15 eBay's Affiliate Marketing Program or programs.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

17 Responding Party objects to this request on the grounds that it violates  
18 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
19 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
20 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
21 section 940. Responding Party further objects on the ground that this request is vague and  
22 ambiguous.

23 **REQUEST FOR ADMISSION NO. 13:**

24 Admit that Thunderwood used methods, techniques and/or technological  
25 measures to avoid detection by Commission Junction of certain aspects of how Thunderwood  
26 interacted with eBay's Affiliate Marketing Program or programs.

27 / / /

28 / / /



**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 14:**

Admit that Thunderwood utilized methods, techniques and/or technological measures to avoid detection by eBay of Cookie Stuffing caused by Thunderwood.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 15:**

Admit that Thunderwood utilized methods, techniques and/or technological measures to avoid detection by Commission Junction of Cookie Stuffing caused by Thunderwood.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 16:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software and/or code to determine the geographic location of a User.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 17:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software and/or code to determine whether a User was located in San Jose, CA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 18:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software and/or code to determine whether a User was located in Santa Barbara, CA.

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**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 19:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software and/or code that would disable or not engage Thunderwood's Cookie Stuffing technology if a User's computer was located in San Jose, CA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 20:**

Admit that, while participating in an eBay Affiliate Marketing Program or programs, Thunderwood utilized software and/or code that would disable or not engage Thunderwood's Cookie Stuffing technology if a User's computer was located in Santa Barbara, CA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

1 section 940. Responding Party further objects on the ground that this request is vague and  
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 21:**

4 Admit that Thunderwood received commissions from eBay, whether directly or  
5 through Commission Junction, that were based, in whole or in part, on Users whose computers  
6 were directed to eBay's website without the User's knowledge.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

8 Responding Party objects to this request on the grounds that it violates  
9 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
10 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
11 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
12 section 940. Responding Party further objects on the ground that this request is vague and  
13 ambiguous.

14 **REQUEST FOR ADMISSION NO. 22:**

15 Admit that Thunderwood received commissions from eBay, whether directly or  
16 through Commission Junction, that were based, in whole or in part, on Users who had never  
17 actually clicked on a Thunderwood-sponsored eBay advertisement link.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

19 Responding Party objects to this request on the grounds that it violates  
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
23 section 940. Responding Party further objects on the ground that this request is vague and  
24 ambiguous.

25 **REQUEST FOR ADMISSION NO. 23:**

26 Admit that Thunderwood received commissions from eBay, whether directly or  
27 through Commission Junction, that were based, in whole or in part, Cookie Stuffing caused by  
28 Thunderwood.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague and ambiguous.

**REQUEST FOR ADMISSION NO. 24:**

Admit that Thunderwood engaged in Cookie Stuffing with the intent to defraud eBay.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this request is vague, ambiguous, and constitutes a legal conclusion.

**REQUEST FOR ADMISSION NO. 25:**

Admit that Thunderwood defrauded eBay.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

Responding Party objects to this request on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

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1 section 940. Responding Party further objects on the ground that this request is vague,  
2 ambiguous, and constitutes a legal conclusion.

3  
4 DATED: February 26, 2009

RUS, MILIBAND & SMITH  
A Professional Corporation

5  
6  
7 By: 

LEO J. PRESIADO  
Attorneys for Defendants  
Thunderwood Holdings, Inc., Brian Dunning  
and BrianDunning.com

**PROOF OF SERVICE**

*eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
*Northern District of California, San Jose Division*  
*Case No. C 08-4052 JF*

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF ORANGE )

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On February 26, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT THUNDERWOOD HOLDINGS, INC. TO FIRST SET OF REQUESTS FOR ADMISSION PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

## SEE ATTACHED SERVICE LIST

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

— (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

— (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

— (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on February 26, 2009, at Irvine, California.

✓ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
 RHONDA RADFORD

**SERVICE LIST**

*eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
*Northern District of California, San Jose Division*  
*Case No. C 08-4052*

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